IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.72 OF 2005

Shri Sunil Jaywant Kashikar.)
Aged 29 Adult,)
R/o 20/7 Bhagwati Chawl,)
Chincholi Bunder Road,)
Malad(West), Mumbai 400 064.)..Appellant.
(At present in Nashik Road)(org.Accused)
Central Prison))

V/s.

1. The State of Maharashtra)
At the instance of Sr.Inspector)
of Police, Khar Police Station)
vide their C.R.No.106 of 1999)
)
2. Aparna Anil Prabhu)
Room No.8, Haral Kutir Building,)
Chincholi Bandar Road,)
Malad(W), Mumbai.).Respondents.
(Org.complainant))

Mr.Sudeep Pasbola for appellant.

Mr.K.V.Saste, APP for Respondent-State.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 28, 2007.

ORAL JUDGMENT :

1. This appeal takes exception to the Judgment and Order passed by the Additional Sessions Judge, Greater Bombay dated November 19, 2004 in Sessions Case No.942 of 1999. The appellant/accused has been convicted of the offence punishable under section 307 of I.P.Code and sentenced to suffer R.I. for six

years. In addition, the appellant/accused was ordered to pay compensation to the tune of Rs.5 Lakhs to the complainant-Aparna Anil Prabhu and in default to suffer R.I. for one year.

2. Briefly stated, the prosecution case is that one Aparna Anil Prabhu was residing in room No.8, Haral Kutir Building, Chincholi Bunder Road, Malad(West), Mumbai. After completing her graduation in the year 1988, she started serving in a private marketing company. It is stated that the appellant/accused was residing in front of residential house of said Aparna Prabhu, in one chawl. According to the prosecution, when said Aparna Prabhu was in the 10th Standard, she used to attend one tuition class where the accused used to eve tease her. She had complaint about that to her parents. The parents of the complainant in turn had contacted the teacher of the said tuition class; and all of them approached the parents of the accused complaining about his conduct. Thereafter, eve teasing had stopped. It is the prosecution case that however, when accused used to see the complainant Aparna he simply used to follow her. There was no complaint about any untoward situation reported till the incident in question. It is the prosecution case

that when complainant-Aparna Prabhu was on her duty on 10th March, 1999, she received a telephonic call from the accused requesting her to marry him. On hearing that request, Aparna banged the phone. Once again Aparna received another telephone call in succession, when she again banged the telephone. It is stated that on 11th March, 1999 when Aparna left her house for office and when she was walking towards office, on her way she met the accused on the road before the office. The accused requested her(Aparna) to marry him. When Aparna did not pay any heed and proceeded further towards her office, the accused threatened her that he will kill her and later on would commit suicide. It is stated that soon the accused removed one can from yellow coloured plastic bag and poured the contents on the person of Aparna. As a result of which Aparna received serious burn injuries. Her clothes were torn and the fumes started coming from the clothes and her body. The complainant realised that the liquid poured on her was nothing but acid. She immediately rushed towards her office screaming; and on entering the office, she poured water on her person and requested her colleagues to immediately take her to hospital. Her colleagues rushed her to Bhabha Hospital. On receiving intimation from the hospital, police

reached the hospital and recorded the complaint Exh. 11. The complaint was reduced into writing and registered as C.R.No.106/1999 for offence under section 307 of I.P.Code. Besides recording the complaint, the police seized clothes which were worn by the complainant at the relevant time under panchanama Exh.24. The clothes were sent to Chemical Analyser. The police also carried out panchanama of scene of offence Exh. 25.

3. It is the prosecution case that the appellant/accused was also admitted in same hospital with history of attempt to commit suicide by consuming insecticide known as fenitrophion (New TIK-20). After completing investigation, charge-sheet came to be filed against the appellant for offence under section 307 of I.P.Code. The appellant denied the charge and claimed to be tried. The prosecution examined in all nine witnesses in support of its case. Besides, prosecution relied on the documentary evidence.

4. The trial Court on analysing the evidence on record answered the material issues in favour of the prosecution holding that the material on record establishes the complicity of the appellant/accused

in the commission of the offence, which was no other than offence under section 307 of I.P.Code. The trial Court essentially accepted the version of complainant Aparna Prabhu(P.W.1) as truthful and unblemished. The trial Court also found that the version of Archana A. Prabhu, mother of complainant(P.W.3) corroborated the version of P.W.1 that the accused was residing in front of their building in a chawl and had indulged in eve-teasing the complainant in the past. The trial Court relied on the evidence of first set of witnesses P.W.1, P.W.2 and P.W.3 to answer the crucial issue of involvement of appellant in the commission of the crime. The trial Court has also adverted to the spot panchanama, injury certificate, chemical analyser's report and the like to hold that the prosecution established that the injury was caused to the complainant on account of pouring of acid from the can used by the appellant/accused for that purpose. Taking overall view of the matter, the Court proceeded to record finding of guilt against the appellant and accordingly, sentenced him to suffer R.I. for a period of six years for offence under section 307 I.P.Code and also directed the payment of compensation to the complainant in the sum of Rs.5 Lakhs in default to suffer R.I. for a further period

of one year.

5. After going through the materials on record with the assistance of the counsel appearing for the parties and considering their submissions I was more than convinced that the finding of guilt recorded by the trial Court is unexceptionable. However, I deferred recording of the reasons to affirm the finding of guilt against the appellant- as the final order on the appeal could be passed only after considering the report of the Probation Officer on the financial and economic status of the appellant as well as that of the complainant(P.W.1) with specific reference to the nature of medical treatment undergone by her and recurrent medical expenses incurred by her. In terms of order dated December 26, 2006, the report of the Probation Officer has now been received by this Court dated 17th February, 2007. Consequently the appeal was placed for hearing on the issue of justness of the compensation amount imposed by the trial Court.

6. After hearing counsel for the parties on that aspect, I am now proceeding to finally dispose of this appeal for the reasons to be indicated hereinafter.

7. Counsel for the appellant would contend that the trial Court completely misdirected itself in having failed to appreciate that the evidence of complainant-Aparna Prabhu(P.W.1) in relation to the actual incident was uncorroborated. No other witness was examined by the prosecution though available. This was fatal lacuna in the prosecution case and the appellant deserves benefit of doubt. It was next contended that taking overall view of the matter and accepting the prosecution case as it is, it can be safely inferred that the incident in question could not have happened- as the accused could not have thrown acid and at the same time, attempted to commit suicide. It is next contended that no attempt has been made by the investigating agency to bring evidence regarding procurement and possession of TIK Twenty Liquid stated to have been consumed by the appellant/accused immediately after the incident. This was also fatal to the prosecution case. Besides, there is no evidence as to in what manner the appellant came to be arrested and taken to the hospital. For want of this evidence, link between the identity of the accused involved in the commission of the crime has not been completely established for which, the appellant deserves to be

given benefit of doubt. It is lastly contended that the quantum of sentence of six years of R.I. and imposing of compensation of amount of Rs.5 Lakhs was excessive. The Public Prosecutor on the other hand, supported the finding and the conclusion reached by the trial Court and would contend that no inference is warranted in this appeal.

8. As mentioned earlier, the trial Court has first analysed the evidence of P.W.1, P.W.2 and P.W.3. Indeed, neither P.W.2 nor P.W.3 has spoken about the actual incident in question. That evidence has come only through version of complainant Aparna(P.W.1). In the first place, the question is whether the incident in fact took place. That is established from the evidence of P.W.1 and P.W.2 and the spot panchanama. Direct evidence is of P.W.1. Spot Panchanama would support the prosecution case that incident in fact took place on the scene of offence on that day. Besides spot panchanama, there is evidence of injury certificate and panchanama of seizure of burnt clothes, which were worn by the complainant at the relevant time. The evidence of Doctor would also support the prosecution case that the complainant Aparna(P.W.1) suffered injuries in the said incident.

9. The next question is whether the appellant/accused was responsible for the incident. True it is that the trial Court was left with no option but to record finding against the appellant only on the basis of version of the complainant-Aparna(P.W.1). The trial Court additionally has taken support from the evidence of P.W.3 Arachna Prabhu-mother of the complainant. The trial Court on analysing the evidence of P.W.1 has categorically found that there was no confusion in the mind of the complainant(P.W.1) that the liquid poured on her person was by none other than the appellant. The appellant was known to the complainant as well as P.W.3 since he was staying in a chawl infront of their building. The version of P.W.3 is useful to the extent that the complainant had made grievance about the eve-teasing by accused when she was in the 10th Standard. On analysing the evidence as a whole the trial Court concluded that the evidence was sufficient to hold that the appellant was involved in the commission of the offence. The view so taken by the trial Court is not only a possible view but the only view that could be reached by any standard.

10. The next question is, what prompted the appellant to react in such an unprecedented manner. The trial Court has examined even this aspect very carefully. I am in agreement with the conclusion reached by the trial Court in that behalf. It has been rightly found that it is a case of one sided frustrated lover who ruined the life of one young girl. The appellant had one sided love to which the complainant never responded. The prosecution has established the fact that the complainant was harassed by the appellant when the complainant was in the 10th Standard. As the mother of the complainant and the teacher of the tuition class complained to the parents of the appellant, the eve-teasing had stopped, but the appellant continued to follow the complainant. On 10th March, 1999, the appellant made phone calls to the complainant in her office on two occasions. On both the occasions, he offered to the complainant that she should marry him. The complainant on both the occasions banged the telephone. On the next morning on 11th March, 1999 when the complainant was heading towards her office, the appellant met her outside the office and once again made the same offer. As the complainant did not pay any heed, the appellant obviously being enraged took out Sulphuric Acid, which was in the can

in his possession and poured the same on the face of the complainant. The trial Court has positively found that the appellant either was irked because the complainant refused to marry or was totally frustrated and in this frustrated mood he must have decided to take a revenge of the complainant. The inference so drawn by the trial Court on the basis of evidence on record cannot be faulted. The trial Court has also adverted to the stand of the accused as noted in the Statement under Section 313 of Cr.P.C.. He has admitted that he knew the complainant and her mother and resided in front of their house. Indeed, he denied having ever indulged in eve-teasing the complainant. There was no reason for the complainant to name the appellant for having committed the alleged offence. There is sufficient evidence to hold that there is possibility of appellant having reacted to the situation in such a manner out of frustration or being revengeful. There is substance in the opinion reached by the trial Court that the appellant had gone to the spot with full preparation that if the complainant was to refuse the offer, he would use the sulphuric acid; and thereafter, consume insecticide TIK-20. Thus understood, there is no reason to depart from the conclusion reached by the trial Court about the

involvement of the appellant/accused in the commission of the offence.

11 The argument canvassed on behalf of the appellant that the prosecution having failed to produce the evidence to corroborate the version of the complainant(P.W.1) was fatal and the appellant deserves benefit of doubt, will have to be only stated to be rejected. That aspect has been carefully considered by the trial Court. The trial Court has noted that other eye-witnesses were available for the prosecution, but has found that merely because those witnesses were not examined, was not material lacuna in accepting the prosecution case. This is so because, the complainant who had received multiple injuries had clearly stated that it was the accused and the accused alone who had committed the offence. There was also evidence in the form of medical evidence and in the form of evidence of CA. Besides, the conduct of the accused itself sufficiently corroborates the complainant's version about the involvement of the appellant/accused. In such a case non-examination of other witnesses was of no consequences. In any case, the evidence on record would not permit the Court to give benefit of doubt to the appellant.

12. The argument of the appellant that the incident in question could not have happened at all as the accused on one hand could not have thrown acid, on the other hand accused could not have attempted to commit suicide. This aspect has also been considered by the trial Court. It is rightly found by the trial Court that even though the appellant had no criminal background, but after pouring the acid, the appellant must have repented and attempted to commit suicide. The trial Court has rightly noted that the accused on the given date was mentally prepared not only to commit offence of pouring the acid but immediately followed the act of attempting to commit suicide. Such a situation cannot be totally ruled out. As the evidence on record clearly supports the prosecution case and for the reasons already noted earlier, there is clear evidence about the involvement of the appellant No.1, the argument of giving benefit of doubt to the appellant cannot be countenanced.

13. Even the argument of the appellant that the prosecution should fail for having not produced the evidence of procurement of TIK-20 from the appellant, does not commend to me. Mere absence of such

evidence cannot be the basis to doubt the credibility and veracity of the evidence of P.W.1. The present prosecution is not for the offence of attempting to commit suicide. Suffice it to observe that the prosecution having established from the evidence on record the involvement of the appellant in the commission of the crime, the fact that there is no evidence regarding procurement and possession of the insecticide, and due to consumption whereof the appellant was hospitalised, cannot be the basis to either discard the prosecution evidence on the actual incident or to give benefit of doubt to the appellant. The same reasoning will apply to the argument that the appellant ought to have been given benefit of doubt as there is no evidence how the accused was arrested and taken to the hospital. The argument that the prosecution has not established the link of involvement of appellant in the commission of offence will have to be stated to be rejected. I have already dealt with in the earlier part of the Judgment that the version of P.W.1 being truthful and as if categorically indicates the complicity of the appellant in the commission of the crime, such evidence cannot be discarded. Taking over all view of the matter, I find no reason to depart from the finding of guilt recorded by the trial Court against

the appellant regarding his involvement in the commission of the crime.

14. Counsel for the appellant did argue that the case on hand will not be covered under section 307 of I.P.Code. In my opinion, however, for the nature of evidence ocular and documentary, more particularly medical evidence, there can be no doubt that the offence having been established would be no other than offence under section 307 of I.P.Code. The trial Court has elaborately considered this aspect in the later part of its Judgment from paragraph-30 onwards. The view taken by the trial Court in that behalf is unexceptionable.

15. That takes me to the last argument canvassed on behalf of the appellant. According to the appellant, the punishment imposed by the trial Court is excessive. In so far as the order of sentence of imprisonment for a period of six years is concerned, for the nature of offence, I have no hesitation in taking the view that the same is just and proper and cannot be termed as excessive. The trial Court has considered the issue of quantum of sentence elaborately. There is no reason to depart from the view so taken.

16. The only other aspect to test the argument of excessive punishment, that needs to be examined is that, the trial Court has imposed compensation of Rs.5 Lakhs to be paid to the complainant, although it has noted in paragraph-36 of its Judgment that there was no record before it on the basis of which the Court could assess the financial condition of the accused. Inspite of that, the trial Court proceeded to pass the order on mere assumption that the appellant was doing final year Chartered Accountant at the relevant time and he must have completed that course. The Court has assumed that the appellant will be in a position to pay such compensation.

17. No doubt the punishment in cases of the kind will have to be severe and of deterrence. However, the Court cannot be oblivious to the requirement of the law. It is well established position that while imposing fine or compensation the Court will have to keep in mind the financial status of the accused besides other factors. In the present case, from the findings recorded by the trial Court in paragraph-36, it is obvious that there was no record before the Court to assess the financial condition of accused. Indeed, for the nature of injury and sufferings

caused to the complainant, any amount of compensation cannot undo the loss suffered by her. It has come on record that the appellant was indoor patient for sufficiently long time after the incident. The damage caused on account of acid was so severe that she suffered more than 40% injury and disfiguration. It has come on record that even now the complainant is required to undergo medical treatment and has to incur expenses for that purpose. The complainant has also lost all good opportunities in life after the incident. She lost her job and also has remained unmarried because of the severe injuries and disfiguration.

18. Even so, the Court will have to impose fine or compensation, which will have to be just and proper. As observed by the Apex Court, financial condition of the accused is one factor to be considered by the Court for this purpose. In this backdrop, report of the probation officer was invited. From the report of the District Probation Officer, Mumbai dated 17th February, 2007, it is seen that the appellant himself has no means or resources. He has only one elder brother Dilip Kashikar who is presently residing in a chawl. He has no issues but has to look after his wife. The accused has no other

support whatsoever. The elder brother Dilip is willing to take the responsibility of the appellant. Dilip Kashikar, the elder brother of the Appellant is himself a rickshaw driver and is earning in the range of only Rs. 200 to 250 per day. He has no other source of income. His financial condition is hand to mouth(Betachi). Indeed, the report of the probation officer also highlights that the complainant has suffered medical expenses to the tune of Rs.15 to 20 Lakhs so far.

19. During the course of hearing on the point of punishment, Dilip Kashikar was present in Court. He gave undertaking to the Court that he himself will secure loan and raise finance upto Rs.3 Lakhs and pay that amount as compensation. Viewed in this backdrop, in my considered opinion, although the trial Court may be right in observing that high compensation amount ought to be fixed, but having regard to the financial status of the appellant himself, he has no means at all to pay that amount. If the appellant was not to pay the amount of compensation, further punishment provided is R.I. one year only. The appellant would inevitably suffer that consequence. However, to mitigate the situation, as the appellant’s elder brother Dilip

Kashikar has come forward and given undertaking to this court that he will arrange for the amount of Rs.3 Lakhs, in my opinion, having regard to the financial status of the elder brother as noted by the Probation Officer, interest of justice will be met if the compensation amount is reduced to Rs.3 Lakhs.

20. As mentioned earlier, amount of Rs.3 Lakhs is not readily available with Dilip Kashikar. He would require some time to pay that amount by raising that amount. Counsel for the appellant fairly submits that if there was any possibility for directing the appellant himself to pay the compensation amount in future, in that case the appellant after being released from jail would have made all efforts to raise the amount so as to pay the same. However, he rightly submits that the provisions of section 357 read with provisions of Chapter XXXII of the Cr.P.C. would not permit the Court to provide for such prospective liability of the appellant. In other words, Court will either have to sustain the order of the trial Court as it is or to reduce the quantum of compensation but there is no other possibility. It is in this backdrop, I am inclined to accept the offer given on behalf of the appellant by his elder brother Dilip Kashikar; and to reduce the

compensation amount to only Rs.3 Lakhs.

21. Accordingly, this appeal will partly succeed on the following terms.

(A) The impugned Judgment and Order is modified to the limited extent that the amount of compensation determined by the trial Court as Rs.5 Lakhs to stand reduced to Rs.3 Lakhs.

(B) Rest of the Judgment and Order to remain as it is.

(C) Ordered accordingly.